

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

TRANSCRIPT OF CIVIL CAUSE FOR MOTION FOR RELIEF OF COUNSEL
BEFORE THE HONORABLE PAUL A. CROTTY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: MICHAEL POTENZA, ESQ.
DUSTIN NOFZIGER, ESQ.
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919 Third Avenue
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For the Defendant: DAVID MARC SCHWARTZ, ESQ.
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1 THE CLERK: Your Honor, this is the matter of Counsel
2 in the matter of Robert Allen Lee, Individually on behalf all
3 others similarly situated v. Stacy Makhnevich, et al., Docket
4 Number 11-CV-8665.

5 Counsel for plaintiff, please state your
6 appearances.

7 MR. POTENZA: Your Honor, Michael Potenza, Debevoise
8 & Plimpton on behalf of plaintiff. With me is Dustin
9 Nofziger. Mr. Nofziger's application to the bar of this court
10 is pending. With Your Honor's permission he will be
11 presenting today.

12 THE COURT: He's welcome. What happened to Mr. Levy?

13 MR. POTENZA: Mr. Levy is D.C. today, Your Honor.

14 THE CLERK: For defendant.

15 MR. SCHWARTZ: Good afternoon, Your Honor. David
16 Schwartz for Stacy Makhnevich.

17 THE COURT: How are you, Mr. Schwartz?

18 MR. SCHWARTZ: Good to see you.

19 THE COURT: Mr. Potenza, what's the problem now?

20 MR. POTENZA: I'm sorry.

21 THE COURT: You have some objections to Mr.
22 Schwartz's being relieved?

23 MR. POTENZA: Well, the problem is we don't know
24 exactly who he is representing, which entities he's
25 representing, and if I could my colleague, Mr. Nofziger is

1 more familiar with the --

2 THE COURT: Okay. Mr. Nofziger, didn't mean to cut
3 you off. Go ahead.

4 MR. NOFZIGER: Your Honor, we're before the Court
5 today because on August 16th Mr. Schwartz's associate Jen
6 Stevens told plaintiff's counsel that Gurstman Schwartz [Ph.]
7 had only been retained by the individual defendant Stacy
8 Makhnevich and not by the entity defendants. In addition, on
9 August --

10 THE COURT: Wait, wait. The August 16th letter says I
11 represent Stacy Makhnevich and Aster Dental.

12 MR. NOFZIGER: In a prior communication to our co-
13 counsel at Public Citizen James Stevens who is Mr. Schwartz's
14 associate told Ms. Patterson that Gurstman Schwartz, the firm,
15 has only been retained by the individual defendant Stacy
16 Makhnevich and not by the entity defendants. In addition, he
17 sent an email to plaintiff's counsel on August 16th where he
18 said that in response to our request he had tried to reach out
19 to the entity defendants, that he had called Aster Dental, the
20 main number for Aster Dental, spoken to a woman who is the
21 owner there and that woman said that Aster Dental had no
22 connection to Stacy Makhnevich. This was prior to the letter
23 that Mr. Schwartz sent to the court on the same date stating
24 that Mr. Schwartz does in fact represent Aster Dental.

25 Obviously it's concerning to us if Mr. Schwartz does

1 not represent all defendants because he accepted service for
2 defendants in January 2012. He's appeared on behalf of all
3 defendants. He filed a motion to dismiss and an answer on
4 behalf of Aster Dental. He wrote a letter to the court on
5 February 21, 2012 where he said that "My firm is representing
6 all defendants in the above captioned action," and even his
7 motion to withdraw is a motion to withdraw from representation
8 of both Stacy Makhnevich as an individual and Aster Dental.

9 THE COURT: So what's the problem?

10 MR. NOFZIGER: Well, the problem, Your Honor, is that
11 we need to know who exactly Mr. Schwartz represents and
12 what --

13 THE COURT: Well --

14 MR. NOFZIGER: I'm sorry.

15 THE COURT: I thought he said who he did represent.
16 Mr. Schwartz, who do you represent?

17 MR. SCHWARTZ: My notice of appearance was for Stacy
18 Makhnevich and Aster Dental.

19 THE COURT: Okay. Aster Dental according to the
20 caption of the case is a series of entities.

21 MR. SCHWARTZ: Yes, Your Honor.

22 THE COURT: Also known as, right, Chrysler Building
23 and Northeast P.C. and Southeast Dental and Lincoln Square
24 Dental Arts in Manhattan.

25 MR. SCHWARTZ: That's correct.

1 THE COURT: Apparently the dentist had offices on the
2 east side and the west side of Manhattan. That's what I infer
3 from those names but -- what more do you want, Mr. Nofziger?

4 MR. NOFZIGER: Your Honor, we'd like Mr. Schwartz to
5 state on the record which of the entities he in fact
6 represents, what the basis for that representation is and why
7 his associate told us that his firm does not in fact represent
8 Aster Dental and the defendants.

9 THE COURT: If he wants to he can. Mr. Schwartz.

10 MR. SCHWARTZ: I wasn't there for that conversation
11 but if he said it he's new to my office.

12 THE COURT: He made a mistake.

13 MR. SCHWARTZ: So he made a mistake if he did say
14 that.

15 THE COURT: So do you want to state for the record,
16 Mr. Schwartz, one further time who you represent?

17 MR. SCHWARTZ: I represent Stacy Makhnevich and Aster
18 Dental.

19 THE COURT: Mr. Nofziger, what more do you want? I
20 mean under Romeo & Juliette this is -- parting is such sweet
21 sorrow. Mr. Schwartz wants to get out and I for the life of
22 me I can't see why we shouldn't let him out in light of -- you
23 say you wanted to know certain facts. He's told you what
24 those facts are.

25 MR. NOFZIGER: Your Honor, we just -- we're not

1 opposed I think at this point in time to allowing Mr. Schwartz
2 to withdraw.

3 THE COURT: He's a lucky man then and order he's
4 withdrawn.

5 MR. NOFZIGER: But we just wanted to know on the
6 record who he represented given the --

7 THE COURT: He's told you that now.

8 MR. NOFZIGER: Okay.

9 THE COURT: He's told you that repeatedly.

10 MR. NOFZIGER: So I think unless my co-counsel has
11 anything further --

12 THE COURT: Mr. Potenza, do you have anything you
13 want to add?

14 MR. POTENZA: I have nothing to add, Your Honor.
15 Thank you.

16 THE COURT: All right.

17 MR. SCHWARTZ: Just for the record, we did comply
18 with all the discovery that you asked us to to the best of our
19 ability.

20 THE COURT: Is that right, Mr. Nofziger?

21 MR. NOFZIGER: To the best of their ability is
22 correct.

23 THE COURT: So, Mr. Schwartz, you're relieved.

24 MR. SCHWARTZ: Thank you, Your Honor.

25 THE COURT: This is being transcribed?

1 THE CLERK: Yes, Your Honor.

2 THE COURT: So the transcript will contain an oral
3 order and it will be entered in on ECF today that the motion
4 by Mr. Schwartz to be relieved as counsel, the Schwartz law
5 firm relieved as counsel for Stacy Makhnevich and Aster Dental
6 is granted.

7 MR. NOFZIGER: Your Honor, we would also request that
8 you order Stacy Makhnevich and the named defendants to appear
9 in this proceeding.

10 THE COURT: Well, I'm not going to order that. If
11 they don't you take a default against Ms. Makhnevich. You
12 personally serve her and Aster Dental of course is a
13 corporation and it must appear by counsel.

14 MR. NOFZIGER: So if they don't appear in a period of
15 time --

16 THE COURT: You schedule a proceeding or you notice
17 their deposition. You take action that requires some kind of
18 response and there's no response you bring that to my
19 attention and we'll consider what relief is appropriate.

20 MR. NOFZIGER: Thank you, Your Honor.

21 THE COURT: But obviously you have a lawsuit pending
22 here, Mr. Nofziger. I don't want to do anything to interfere
23 with you and the prosecution of your rights that requires the
24 participation and cooperation of the defendant. If they
25 choose not to participate or cooperate there's statutory and

1 rule consequences to that. So I'm sure you can figure it out
2 from there.

3 MR. NOFZIGER: Yes, Your Honor. Thank you.

4 THE COURT: Thank you very much. Thank you, Mr.
5 Schwartz.

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I certify that the foregoing is a court transcript from
an electronic sound recording of the proceedings in the above-
entitled matter.

Shari Riemer

7 | Dated: September 10, 2013